United Nations CEDAW/C/OP.8/GBR/2

Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Observations of the United Kingdom*

I. Introduction

1. On 24 July 2017, the United Kingdom Government received a request from the Committee on the Elimination of Discrimination against Women (the Committee), pursuant to Articles 8 and 9(2) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (the Convention). The request was to provide written information on measures to implement recommendations in its confidential inquiry report into abortion in Northern Ireland

2. The Committee are reminded that the power-sharing negotiations between the main political parties in Northern Ireland are ongoing, and in the absence of a functioning devolved government, references to Northern Ireland contained in this response remain subject to review and agreement by future Ministers with responsibility for the issues concerned.

II. Constitutional framework

3. The Committee is aware and highlights in its findings that Northern Ireland is part of the United Kingdom and subject to much of its legislation. It notes that the Abortion Act 1967 has never extended to Northern Ireland and the Parliament there has decided not to adopt its provisions.

4. The Northern Ireland devolution settlement gives legislative control over certain matters (known as 'transferred matters') to the NI Assembly. Issues on which the Northern Ireland Assembly has full legislative powers include health and social services (including for abortion law), equal opportunities and justice and policing (the latter was devolved in 2010).

* The present document is being issued without formal editing.

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5. The UK Government and the Northern Ireland Executive have agreed a Memorandum of Understanding setting out the principles that underlie relations between them. In terms of legislation, the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. The devolved administrations are responsible for seeking such agreement as may be required for this purpose on an approach from the UK Government. The issue of abortion is a devolved matter and therefore a matter for the NI Assembly to legislate on.

UK Government position on abortion in Northern Ireland — Recent developments

6. Since the Committee conducted its inquiry, the UK Government announced on 29 June 2017 that women normally resident in Northern Ireland would no longer be charged for abortions received in England.

7. For many years, women have been travelling from Northern Ireland to England Wales and Scotland in order to access abortions. This has always been legal, but women have been charged for abortions, which has made it difficult for some women. The Government have now determined how this service will be delivered in England. The Scottish and Welsh governments are making similar arrangements.

8. Women from Northern Ireland will access the service through existing providers of abortions in England, in the same way that women in England do. The vast majority of abortions will be carried out by independent sector providers, although a small number of procedures will continue to be provided through the NHS where this is necessary for medical reasons.

9. Women from Northern Ireland seeking termination of pregnancy in England will be eligible for:

- A consultation with an abortion provider in England, including an assessment of whether the legal grounds for an abortion are met;
- The abortion procedure;
- HIV or sexually transmitted infection testing as appropriate;
- An offer of contraception from the abortion provider; and
- Support with travel costs if the woman meets financial hardship criteria.

10. This is comparable with the experience that women in England receive.

11. The Government is establishing a central booking service that will be run by one of the providers. The central booking service will simplify the process for women who choose to access these services. It means that women from Northern Ireland will have a single telephone number to call and an appointment will be made with the most appropriate provider, based on the woman's requirements, her medical condition and the availability of the providers.

12. These new arrangements will make it easier for women in Northern Ireland to access abortions for two main reasons. Firstly, the financial burden will be lifted, as they will no longer have to pay for the abortion consultation and or procedure. Secondly, the central booking service will simplify the process for the women concerned and those who meet eligibility criteria will also have travel costs met.

Situation in other jurisdictions for comparison

13. The Committee will be aware that Northern Ireland is not alone in setting conditions for lawful abortions. In other countries that are also party to the Convention such as Ireland, Poland, Andorra, El Salvador, San Marino and Paraguay, abortion is illegal or only available in very limited circumstances. For example, San Marino has a total ban on abortion. Currently abortion is illegal in Andorra and it can only be performed to save the life of the pregnant woman and Andorra is a signatory of CEDAW. In Malta abortion remains illegal. The UK Government is aware of the attached article [1] which sets out the legal position on abortion across different countries.

Comments from Northern Ireland Departments on the CEDAW report findings on matters falling within their devolved authority

14. In the absence of Government Ministers in Northern Ireland what follows are some factually based observations on the report that do not pre-empt or anticipate what future Ministers may wish to say in due course about the report and its various recommendations.

15. It is the intention of the Department for Communities NI that the UN CEDAW inquiry report will be brought to the attention of an incoming Minister as soon as one is appointed for her/his consideration.

III. Comments on the Committee's findings

16. **The Committee finds that the State party is in violation of Convention articles (see CEDAW/C/OP.8/GBR/1, para 72).**

> "(a) 1 and 2 read with articles 5, 12 and 16 for perpetrating acts of gender-based violence against women through its deliberate maintenance of criminal laws disproportionately affecting women and girls, subjecting them to severe physical and mental anguish that may amount to cruel, inhuman and degrading treatment."

17. Since the delegation's visit in 2016, an inter-Departmental working group on fatal foetal abnormality has completed its work. The working group comprised senior health professionals and officials from the Northern Ireland Departments of Health and Justice. A report was presented to the Health and Justice Ministers in October 2016 with the intention that, following consideration, it would be presented to the Northern Ireland Executive Committee for a decision on the recommendations and then published. Unfortunately the Executive went into suspension before the report was submitted and no further action can be taken until political structures are reinstated.

18. In June 2017, the Northern Ireland Court of Appeal overturned the High Court's decision in November 2015 which declared the abortion legislation in Northern Ireland to be incompatible with Article 8 of the European Convention on Human Rights, in the circumstances where there was a fatal foetal abnormality or where the pregnancy arose as a result of rape or incest. It concluded that the Court should not

[1] A Commentary on LC v Peru: The CEDAW Committee's First Decision on Abortion https://repository.up.ac.za/bitstream/handle/2263/37008/Ngwena_Commentary_2013.pdf?sequence=1

intervene and that change to the law on abortion is a matter for the Northern Ireland Assembly to decide upon. The ruling of the Court of Appeal is currently under appeal to the Supreme Court and a ruling is pending.

19. In June 2017, the UK government announced a decision to provide abortions without charge in England for women resident in Northern Ireland who cannot have a legal termination in this jurisdiction. Scotland and Wales followed with similar proposals.

> "(b) 12 for failing to respect women's right to health by obstructing their access to health services including through laws criminalising abortion, which punish women and those assisting them, and rendering access to post-abortion care, irrespective of the legality of the abortion, inaccessible as clinicians fear prosecution."

20. The law on abortion in Northern Ireland has been interpreted to allow abortion in very limited circumstances. In March 2016, the Department of Health published "Guidance for Health and Social Care Professionals on Termination of Pregnancy in Northern Ireland". The guidance aims to provide clarity for health and social care professionals on the law, as it stands, concerning termination of pregnancy in Northern Ireland. It also emphasises the need to provide aftercare support to women who seek it, regardless of where a termination of pregnancy has been carried out. It is the responsibility of Health and Social Care Trusts to provide such support for women through access to appropriate treatment, including counselling, depending on individual needs. Support and services offered include: psychological support; confidential counselling; midwifery support, including services from a bereavement midwife or bereavement coordinator; services from obstetrics and gynaecology staff; leaflets providing signposting information to voluntary organisations; and services from the patient's GP or community midwife.

21. The CEDAW Report contains criticism that the guidance does not clarify when abortion is legal. However, it is not possible to provide guidance that will cover all situations where an abortion may be legal. A termination is legal when a healthcare professional has assessed that the woman's life or physical or mental health is at risk of long term or serious harm. The guidance clarifies that it is for a medical practitioner to assess, on a case by case basis, when a woman's condition is such that a termination could be justified under the law. It is a clinical decision based on the individual circumstances of the case. The Department has no evidence that health professionals are failing to provide abortion services where it is lawfully justified. Where a health professional is uncertain, there is a management structure and legal services available to assist their decision making.

> "(c) 2, 12 and 16 for denying women the right to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to exercise those rights."

22. Emergency contraception is available free in Northern Ireland from any general practice that provides contraceptive services, from all Family Planning/CASH (contraception and sexual health) clinics, some college sites and on: https://sexualhealthni.info

23. Brook clinics in Belfast and Coleraine (supported by Public Health Agency (PHA) and Genito-Urinary Medicine (GUM)) clinics in all areas. A list of the GUM clinics and map showing locations is available on: https://sexualhealthni.info/

"(d) 2, 12, 14(2) (b) and 16(1) (e), read with article 1 for dereliction of its public health duties. The concentration of sexual and reproductive services in Belfast and the exportation of abortion to England seriously impacts disadvantaged groups unable to travel for socioeconomic reasons, exacerbating multiple forms of discrimination already suffered by rural, migrant, asylum-seeking, refugee women and women in situations of poverty."

24. The Department of Health NI refutes the statement that sexual and reproductive health services in Northern Ireland are concentrated in Belfast. All five Health and Social Care Trusts (the Trusts) across Northern Ireland provide sexual and reproductive health services in line with the population size and profile they serve. Services are available from general practitioners and also through sexual and reproductive health clinics. While some clinics are located in hospitals, the majority are in convenient, accessible locations in communities, including adjacent to student and sex worker populations and also health centres serving rural areas. Clinic times also vary to improve accessibility. The clinics offer a mixture of open access (no appointment is needed) and booked appointments. Details of clinics in all Trusts are available on the Trusts' websites and also on the Sexual Health NI website run by the Public Health Agency. Location of clinics (as of September 2017) is set out below.

Trust	*Location of sexual and reproductive health services*
Belfast	Royal Victoria Hospital
	College Street
	Bradbury Centre
	Holywood Arches Health Centre
	Knockbreda Centre
	Beech Hall Centre
	Carlisle Centre
	Dundonald, Belfast
South Eastern	Bangor Hospital
	Lisburn Health Centre
	Downe Hospital
	Ballynahinch Community Services
	Stewartstown Road Health Centre, Belfast
	Newtownards Clinic
Southern	John Mitchell Place, Newry
	Portadown Health Centre
	Thomas Street Clinic, Dungannon
	Banbridge Health Centre

Trust	*Location of sexual and reproductive health services*
Western	Brae Clinic, Waterside Health Centre
	Limavady Health Centre
	Enniskillen South West Acute Hospital
	Omagh Hospital and Primary Care Complex
	Strabane Health Centre
Northern	Braid Valley Hospital (integrated Sexual Health Hub)
	Mid Ulster Hospital (integrated Sexual Health Hub — not yet fully operational)
	Coleraine Community Clinics
	Moyle Outpatient Department
	Ballymoney Health Centre
	Carrickfergus Health Centre
	Antrim Health Centre
	Glengormley Community Services Centre
	Whiteabbey Health Centre

25. At sexual and reproductive health clinics, all men and women are seen and individually assessed by a sexual and reproductive healthcare trained member of staff and will be offered appropriate counselling, treatment or tests. Once an initial assessment has taken place, a patient may be referred directly to a hospital or other clinic if required (e.g. to a genitourinary medicine clinic for STI testing, if not available at the clinic).

26. In all Trusts, sexual and reproductive health clinics provide a full range of contraception services, including emergency contraception (morning after pill). In some cases patients wishing to have an intrauterine device (IUD) fitted may have to be referred to another location, depending on time constraints and availability of trained staff. Signposting to other services, including the Family Planning Association (FPA) in the event of unplanned pregnancy, is also offered. All contraception services are free. A number of the Trusts provide interpreters to all patients who require this service including, for example: Lithuanian, Polish, Tetum (East Timorese), Portuguese and Romanian.

27. In addition, the UK Government has introduced a scheme where women in financial hardship situations will receive free abortions in England and will also have all travel arranged and paid for by the service provider. The procedure will therefore be received at no cost.

> "(e) 10 and 12 for failing to protect women from harassment by anti-abortion protestors when seeking sexual and reproductive health services and information."

28. The Police Ombudsman for Northern Ireland, a statutorily independent body, exists to receive and consider complaints of police misconduct including alleged police inaction.

29. **The Committee finds that the failure to combat stereotypes depicting women primarily as mothers exacerbates discrimination against women and violates article 5, read with articles 1 and 2 of the Convention (see CEDAW/C/OP.8/GBR/1, para 74).**

30. It is not possible to respond to this statement in the absence of any alleged factual evidence supporting the assertion made in the report.

31. **The Committee finds that the State party has failed to prioritise the prevention of unplanned pregnancy through the provision of quality sexuality education. Its lack of oversight on schools' discretion to deliver the RSE curriculum to ensure that it is evidence-based and includes contraceptive use, safe abortion and post-abortion care, violates article 10(h) of the Convention (see CEDAW/C/OP.8/GBR/1, para 76).**

32. The Education (Curriculum Minimum Content) Order (NI) 2007 specifies the minimum content for each area of learning of the curriculum at each key stage. Teachers have considerable flexibility to select from within those areas the aspects they consider appropriate to the ability and interests of their pupils. While the Council for the Curriculum, Examinations and Assessment (CCEA) provides guidance to schools, it does not stray into the actual content of teaching and learning as this is a matter for each school. The advisory, discretionary nature of curriculum advice in Northern Ireland is a fundamental feature of the system here, particularly in non-publicly examined subjects such as Relationship and Sexuality Education (RSE).

33. **The Committee finds that the State party is responsible for (see CEDAW/C/OP.8/GBR/1, para 83).**

> "(a) Grave violations of rights under the Convention considering that the State party's criminal law compels women in cases of severe foetal impairment, including fatal foetal abnormality (FFA), and victims of rape or incest to carry pregnancies to full term, thereby subjecting them to severe physical and mental anguish, constituting gender-based violence against women; and
>
> (b) Systematic violations of rights under the Convention considering that the State party deliberately criminalises abortion and pursues a highly restrictive policy on accessing abortion, thereby compelling women to:
>
> (i) Carry pregnancies to full term;
>
> (ii) Travel outside NI to undergo legal abortion; or
>
> (iii) Self-administer abortifacients."

34. For the reasons outlined above, the UK Government does not accept that women from Northern Ireland have been subject to grave and systematic violations of their rights under the Convention.

Conclusion

35. The Committee's findings and recommendations which focus on changes to the criminal law on abortion cannot be addressed in the absence of a legislature with authority to legislate on such matters in Northern Ireland. A substantive response to

the findings and recommendations contained in the CEDAW report will be provided once political structures are in place to authorise and approve the response.

Factual amendments

36. We would also draw attention to three further points regarding factual accuracy within the CEDAW report:

(a) Para 14. The second sentence is incorrect. Guidance was not provided in 2013, a consultation on draft guidance was conducted. Guidance was provided in 2016;

(b) Para 17. The Attorney General did not issue a circular to all hospitals to verify the lawfulness of all abortions. The Coroner's Office has advised that the Coroner did not issue a Directive in 2015 on the matter. The Court of Appeal in Northern Ireland ruled in 2013 that stillborn children were within the jurisdiction of the Coroner as 'deceased persons';

(c) Para 18. The draft 2013 guidance was never issued. It was consulted upon. The current guidance accurately states the legal position.